IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST) NO.1719 OF 2007
IN
BOMBAY CITY CIVIL COURT L.C.SUIT NO.5232 OF 2004

Mrs. Draupadi Adumbar Ankushe ...Appellant
Vs.
M/s. M.N.P. Associates & Anr. ...Respondents

Mr.Mohit Jadhav, Advocate for Appellant
Mr. B.K. Javeri, Advocate for Respondent No.1

CORAM: SMT.ROSHAN DALVI,J.
DATED: 15TH JUNE, 2007

P.C.

1. The Appellant is one of the seven siblings claiming the suit property. She has a 1/7th share therein. She has sued for declaration that the plans for development of the suit property sanctioned by the Respondent No.2 are not binding on her and that agreement of assignment dated 17th February, 1994 and other documents are not signed or executed by her.

2. The learned Judge has decided the preliminary issue of pecuniary jurisdiction of the Civil Court. The Plaintiff valued

the Suit at Rs.1000/- . The suit property admeasures 7677 sq. mtrs of open land, with structures thereon. The Plaintiff is required to value the suit under the provisions of Section 6 (iv)(ha). The Suit is therefore, not being correctly valued. The Suit is for declaration that the agreement of assignment is void. The Appellant as the Plaintiff must therefore, pay half of the ad-valorem fee leviable on the value of the property. The Plaintiff must therefore, value the immovable property which is open land and 79 structures thereon separately.

3. The Appellant's/Plaintiff's Advocate relied upon the Judgment in the Jafferali Allibhai Vs. S.R. Dossa reported in AIR 1969 Bombay 66. There are further Judgments including the full Bench Judgment of this Court, which have held that for avoidance of documents relating to immovable property which are structures, the market value has to be considered. Consequently the learned Judge's order holding that the Plaintiff must value the suit property for prayer (a)(i) and (a) (ii) under Section 6(iv)(ha) of the Bombay Court Fees Act is correct and accordingly confirmed.

4. The Plaintiff has described the Suit property in para 2 of the Plaint. The suit property admittedly comprises of the entire CTS No.704 admeasuring 4677 sq. Mtrs. The Suit

property admittedly has 79 structures, which are numbered 704(1) to 704/79. Though the Plaintiff has not attached the Schedule showing the description of the property, the Plaintiff has annexed CTS Plan for Survey No.704 showing the open land as well as structures. The description of the property under Order 7 Rule 3 of the C.P.C is to be by showing boundaries or Survey numbers. The Plaintiff has given the Survey number as well as the area of the Survey number. The rejection of the Suit on the ground that it is not properly described by the learned Judge is, therefore, not correct.

5. Hence, the appeal is disposed of at the admission stage by the following order :

(i) The Suit shall have to be decided on merits by the Court having pecuniary jurisdiction to try the Suit.

(ii) The Bombay City Civil Court does not have the pecuniary jurisdiction to try the Suit.

(iii) The Suit is not correctly valued.

(iv) The Plaintiff shall comply with order Clause 1 of the impugned order within 8 weeks. Upon such

compliance the Plaint shall be returned to proper Court for filing. If this order is not complied the plaint shall stand rejected under the provision of Order 7 Rule 11 of the C.P.C.

(v) The impugned order relating to the rejection of the Plaint for want of proper description is set aside.

(vi) The Appeal is disposed off accordingly.

(SMT. ROSHAN DALVI, J.)